

In the Supreme Court of the State of Alaska

Marie Alice Sternquist,
Appellant,

v.

Greg Sternquist,
Appellee.

Trial Court Case No. 3AN-17-09650CI

Supreme Court No. S-17594

Order

Motion to Supplement Trial Court File

Date of Order: 11/4/2020

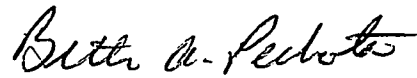
On consideration of the Motion to Supplement Trial Court File filed by Marie Sternquist on 10/28/2020, and the opposition filed by Greg Sternquist on 11/4/2020,

IT IS ORDERED:

The motion is **DENIED**. Please refer to Appellate Rule 210 for Record on Appeal.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts



Beth A. Pechota, Deputy Clerk

Distribution:

Email:
Sternquist, Marie Alice
Baranow, David W.

(c) **Costs.** Costs, attorney's fees, damages, and interest may be allowed as in other cases, but the state shall not be liable for any of them.

(SCO 439 effective November 15, 1980; amended by SCO 554 effective April 4, 1983; by SCO 847 effective January 15, 1988; by SCO 1088 effective July 1, 1992; by SCO 1145 effective October 1, 1993; by SCO 1153 effective July 15, 1994; by SCO 1155 effective July 15, 1994; by SCO 1211 effective July 15, 1995; by SCO 1226 effective January 22, 1996; by SCO 1235 effective July 15, 1996; by SCO 1238 effective July 15, 1996; and by SCO 1868 effective April 15, 2016)

Dissent to SCO 1088:

RABINOWITZ, Chief Justice, with whom COMPTON, Justice, joins, dissenting:

I am not persuaded that either existing Criminal Rule 39, or Appellate Rule 209, requires amendment. I think it can be safely predicted that these amendments will have a chilling effect on an indigent defendant's obtaining the services of appointed counsel as well as on an indigent defendant's decision whether or not to seek review or to appeal.

Note: AS 18.85.170(4) defines "indigent person" for purposes of public defender appointments as "a person who, at the time need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or the party's dependents of food, clothing, or shelter and who has not disposed of any assets since the commission of the offense with the intent or for the purpose of establishing eligibility for assistance under this chapter."

Note to SCO 1238: Ch. 79 § 1 SLA 1995 amends AS 09 by adding a new chapter related to prisoner litigation against the state. AS 09.19.010 prohibits the court from accepting any filing in an action governed by AS 09.19 until the filing fee required by AS 09.19.010 has been paid.

Section 19 of chapter 79 amends Appellate Rule 209(a) to add subparagraph (a)(6) which states that the provisions of paragraph (a) do not apply in a prisoner's appeal that is governed by AS 09.19. Section 5 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Rule 210. Record on Appeal.

(a) **Composition of Record.** The record on appeal consists of the entire trial court file, including the original papers and exhibits filed in the trial court, the electronic record of proceedings before the trial court, and transcripts, if any, of the trial court proceedings. Except as otherwise ordered by the appellate court, the record does not include documents or exhibits filed after, or electronic records or transcripts of proceedings occurring after, the filing date of the notice of appeal, and does not include transcripts not designated under subsection (b)(1) of this rule unless those transcripts were filed with the trial court prior to the filing date of the notice of appeal. Filings, exhibits, electronic recordings, or transcripts

presented to the trial court after the filing date of the notice of appeal may be added to the record on appeal only upon motion pursuant to subsection (i). Material never presented to the trial court may not be added to the record on appeal.

(b) Preparation of Transcript.

(1) Designation of Parts of Record to be Transcribed.

(A) At the time the notice of appeal is filed, the appellant shall file and serve on the other parties to the appeal a designation of the parts of the electronic record which appellant intends to transcribe. The appellant shall designate all parts which are essential to a determination of the issues on appeal. If appellant claims that the written findings of fact or conclusions of law are insufficient or erroneous, the designation shall include any oral findings of fact and conclusions of law. Within 10 days after service of appellant's designation, any other party to the appeal may file and serve a designation of additional parts of the electronic record to be transcribed.

(B) If a party designates an entire trial or hearing, the party's designation shall include only the nature and dates of the proceeding. If a party designates parts of a trial or hearing, the party's designation shall include the nature and dates of the proceeding, the CD or tape number and log numbers or time where these parts appear [CD (#), at Time 00:00:00 or Tape (#), at Log 00:00:00], and a narrative description of the portions requested. If a party designates a portion of a witness' testimony, it must appear from the party's narrative description that part of the witness' testimony has been omitted.

(2) **Preparation at Public Expense.** The clerk of the appellate courts shall arrange for preparation of the transcript in cases in which the transcript is prepared at public expense. The transcript shall include all parts of the electronic record designated by the parties to the appeal; however, the voir dire examination of jurors and jury instructions shall not be transcribed unless a party has specifically requested these portions of the trial.

(3) **Preparation Not at Public Expense.** In cases in which the transcript is not prepared at public expense, the appellant shall arrange for preparation of a transcript of all parts of the electronic record designated by the parties to the appeal. Upon request, the clerk of the trial courts shall provide to the transcriber a copy of the designations, a copy of the electronic record or parts thereof, a copy of the log notes and other information necessary for preparation of the transcript. Unless the parties agree otherwise by stipulation, or unless otherwise ordered by the appellate court, the person designated to prepare the transcript shall not be a relative, employee, or attorney of any of the parties, or a relative or employee of that attorney, or be financially interested in the action. Apart from contracting for the preparation of the transcript within a given period of time and at a given price, neither the party nor the party's attorney may exercise control over the preparation of the transcript.

(4) **Time for Completion.** Preparation of the transcript shall be completed within 40 days after filing of the notice of

appeal. If the transcript is not being prepared at public expense and the transcriber is unable to complete the transcript within this time, the appellant shall move the appellate court for an extension of time. The motion shall comply with Appellate Rule 503, shall also be served on the clerk of the trial courts, and shall be considered a routine motion within the meaning of Rule 503.5(b).

(5) *Filing and Distribution.* Upon completion of the transcript, the transcriber shall promptly notify the parties in writing that the transcript has been completed and shall file with the clerk of the appellate courts (i) the original transcript; and (ii) an electronic version of the transcript in the form and format prescribed by administrative bulletin. No other copies of the transcript are required unless otherwise specified by the clerk.

(6) *Costs.* If the transcript is not being prepared at public expense, the cost of preparing the original transcript, the copy filed with the court and the computer diskette shall be paid by the appellant. This cost may be taxed as a cost in the case, but if any party causes parts of the electronic record to be transcribed unnecessarily, the court may impose the cost of transcribing such parts on that party.

(7) *Form of Transcript.* Transcripts shall be in the form and format prescribed by administrative bulletin.

(8) *Statement in Lieu of Transcript.* If there is no electronic recording from which a transcript can be prepared, the appellant may prepare a statement of the evidence of proceedings from the best available means, including the appellant's recollection, for use instead of a stenographic or electronically recorded transcript. This statement shall be served on the appellee, who may serve objections or proposed amendments, and shall be submitted to the court from which the appeal is being taken for settlement and approval. As settled and approved, the statement shall be filed with the clerk of that court and transmitted to the appellate court in lieu of a transcript.

(c) **Excerpts of Record.**

(1) *Duty to Prepare.*

(A) Each party shall file and serve an excerpt of record with the party's brief.

(B) In cases involving multiple appellants or appellees, each side shall prepare a single excerpt of record. In a case involving multiple appellants who are filing separate briefs, the appellant who filed the first notice of appeal shall prepare and file the excerpt for the appellants, unless the appellants otherwise agree. In a case involving multiple appellees who are filing separate briefs, the appellees shall decide among themselves which appellee shall prepare and file the excerpt for the appellees. Ten days prior to the date on which a side's briefs are due, the parties who are not responsible for preparation of the excerpt shall transmit to the responsible party a list of documents to be included in the excerpt. The responsible party shall include in the excerpt all documents which are specified by the other parties, provided such

documents are in the record. A party who fails to transmit a list of documents to the responsible party by the 10 day deadline waives the right to designate documents for inclusion in the excerpt. The responsible party shall mail a copy of the excerpt to each of the other parties on that side six days before the date the briefs are due, or deliver a copy of the excerpt three days before the date the briefs are due, so that the other parties may include the appropriate citations in their briefs. The cost of copying and mailing the excerpt shall be borne equally by all parties on the side.

(C) A cross-appellant or cross-appellee who elects to file a single brief shall file a single excerpt with that brief. A cross-appellant who makes this election shall include in the excerpt those documents that are properly included in an appellee's excerpt under Rule 210(c)(2). A cross-appellant who elects to file separate briefs shall file and serve notice of this election within 10 days after service of the notice of the due date for appellant's brief. If a cross-appellant makes this election, the cross-appellant and the appellant shall be treated as co-appellants filing separate briefs and shall prepare and submit a combined excerpt as required by Rule 210(c)(1)(B). The cross-appellee and the appellee shall be treated as co-appellees filing separate briefs for purposes of that rule.

(2) *Contents.*

(A) *Appellant's Excerpt.* The appellant's excerpt of record must contain the following parts of the record:

(i) all charging documents, or the petition or complaint, counterclaim, crossclaim, and answer setting out the issues to be tried;

(ii) the judgment or interlocutory order from which the appeal is taken;

(iii) other orders or rulings sought to be reviewed;

(iv) supporting opinions, findings of fact, conclusions of law, or other statements showing the reasoning of the trial court and, if appellant claims that the written findings of fact or conclusions of law are insufficient or erroneous, a copy of the pages of the transcript at which any relevant oral findings of fact and conclusions of law are recorded;

(v) if the appeal is from the grant or denial of a motion, relevant portions of briefs, memoranda, and documents filed in support of and in opposition to the motion;

(vi) if the appellant is challenging the admission or exclusion of evidence, the giving or failure to give a jury instruction, or another oral ruling or order, a copy of the pages of the transcript at which the evidence, offer of proof, ruling, or order and relevant discussion by the court, and any necessary objection are recorded;

(vii) if the appeal is from a final decision in a child-in-need-of-aid proceeding under AS 47.10.080(c) or a case involving the termination of parental rights under AS 25.23.180, the predisposition report prepared in the case; and

(viii) specific portions of other documents in the record,

including documentary exhibits, that are referred to in appellant's brief and essential to the resolution of an issue on appeal.

(B) *Appellee's Excerpt.* The appellee's excerpt of record must contain those parts of the record required under (c)(2)(A) and relied on by appellee that were not included in the appellant's excerpt.

(C) *Portions of the Transcript.* Parties may also include in the excerpt selected pages of the transcript that are critical to the appeal.

(D) *Items Not to Be Included in the Excerpts.* Pages of the transcript and briefs and memoranda filed in the trial court may only be included in the excerpts if required under (c)(2)(A) or permitted under (c)(2)(C). The fact that parts of the record are not included in the excerpts does not prevent the parties or the appellate court from relying on those parts.

(3) *Supplemental Excerpts.* Appellant may file and serve a supplemental excerpt of record with appellant's reply brief or within the time specified for filing a reply brief. No other supplemental excerpt may be filed except by leave of the appellate court granted on motion, or at the request of the appellate court. A supplemental excerpt may not include parts of the record that appear in another excerpt filed in the appeal.

(4) *Form, Filing and Service.* Each party's excerpt of record must be arranged in chronological order, must be bound separately from the party's brief, and must contain a table of contents at the beginning of the first volume. The excerpt and the table of contents must be in the form specified in the Clerk's Instructions for Preparation of Excerpts published in these rules. One copy of the excerpt must be filed and served with the party's original brief. Eight copies of the excerpt must be filed with the bound copies of the brief, and one copy must be served on counsel for each party separately represented, unless a different number is specified by the clerk.

(5) *Excerpts to be Abbreviated.* The parties shall include in the excerpts only those parts of the record that are essential to a determination of the questions presented on appeal. For any infraction of this rule, the appellate court may impose sanctions and withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require.

(6) *Costs.* Subject to (c)(5), the prevailing party is entitled to recover the cost of copying its excerpt of record under Appellate Rule 508(d).

(d) **RESERVED.**

(e) **Preparation of the Trial Court File.**

(1) *Page Numbering.* Upon receiving the notice of appeal, the regional appeals clerk shall number the pages of the record, assembled in accordance with subsection (a) of this rule, in a single consecutive sequence throughout all volumes. Page numbering must be completed within 40 days after filing of the notice of appeal. In an appeal from the Alaska Workers' Compensation Appeals Commission, the commission's record

should be numbered beginning with the number immediately following the number of the last page in the record prepared by the Workers' Compensation Board.

(2) *Confidential Materials.* Papers filed under seal in the trial court and exhibits submitted or introduced at closed hearings in the trial court shall be maintained under seal while they constitute part of a record on appeal, and access to them shall be governed by Rule 512.5(c).

(f) **Briefing Schedule.** Upon filing of the transcript and completion of the page numbering, the clerk of the trial courts shall notify the clerk of the appellate courts that the case is ready for briefing. Upon receiving this notice, the clerk of the appellate courts shall give notice of the due date for the appellant's brief.

(g) **Transmission of the Record.**

(1) *Transmission to Appellate Court.* Upon notification that briefing is complete, the clerk of the trial courts shall transmit the record, excluding physical exhibits, to the clerk of the appellate courts. Physical exhibits shall be retained by the trial court unless specifically requested by the appellate court. As used in this paragraph, "physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of unusually large size or unusual bulk or weight.

(2) *Transfer to Other Court Locations.* The clerk of the appellate courts may direct that the record be temporarily transferred to another court location within the state for the accommodation of counsel in the preparation of briefs.

(h) **Several Appeals.** When more than one appeal is taken to the appellate court from the same judgment, there shall be a single record on appeal. In preparing the record, deadlines which run from filing of the notice of appeal shall run from filing of the last notice of appeal.

(i) **Power of Court to Correct, Modify, or Supplement.** It is not necessary for the record on appeal to be approved by the trial court or a judge thereof except as provided in paragraph (b)(8) and in Rule 211, but if any difference arises whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to that court's decision. If anything material to either party is omitted from the record on appeal by error or accident by court personnel, or is misstated therein, the parties by stipulation, the trial court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected. All other questions as to the content and form of the record shall be presented to the appellate court. Materials (including filings, exhibits, electronic recordings, or transcripts) filed with the trial court after the filing date of the notice of appeal may be added to the record on appeal only upon motion designating by title, description, and filing date the materials sought to be added, and are limited to the following:

(1) materials pertaining to attorney's fees, costs, or prejudgment interest;

(2) amended judgments, and all materials pertaining to those judgments;

(3) oppositions or replies responding to, or orders determining, motions that were filed on or before the filing date of the notice of appeal, and materials pertaining to those documents;

(4) any orders listed in Rule 204(a)(3), together with any motions, oppositions, and replies leading to such orders, and any materials pertaining to those documents;

(5) materials to be added to the record upon entry of an order amending or supplementing the points on appeal; and

(6) materials to be added to the record for other good cause found by the appellate court.

On motion in the appellate court, and for cause, an excerpt of record may also be modified or supplemented to correct omissions by counsel.

(SCO 439 effective November 15, 1980; amended by SCO 461 effective June 1, 1981; by SCO 510 effective August 30, 1982; by SCO 554 effective April 4, 1983; by SCO 577 effective February 1, 1984; by SCO 578 effective February 1, 1984; by SCO 631 effective September 15, 1985; by SCO 736 effective December 15, 1986; by SCO 768 effective March 15, 1987; by SCO 795 effective March 15, 1987; by SCO 883 effective July 15, 1988; by SCO 926 effective January 15, 1989; by SCO 928 effective January 15, 1989; by SCO 988 effective January 15, 1990; by SCO 1153 effective July 15, 1994; rescinded and repromulgated by SCO 1155 effective July 15, 1994; by SCO 1183 effective July 15, 1995; by SCO 1279 effective July 31, 1997; by SCO 1360 effective September 1, 1999; by SCO 1388 effective April 15, 2000; by SCO 1432 effective October 15, 2001; by SCO 1472 effective October 15, 2002; by SCO 1482 effective October 15, 2002; by SCO 1541 effective April 15, 2004; by SCO 1553 effective October 15, 2004; by SCO 1609 effective October 15, 2006; by SCO 1659 effective April 15, 2008; by SCO 1671 effective October 15, 2008; by SCO 1893 effective August 10, 2016; and by SCO 1885 effective October 15, 2016)

Note to Appellate Rule 210(b)(5) and (b)(7): See Administrative Bulletin 31 and the Manual of Transcript Procedures.

Rule 211. Record on Agreed Statement.

When the questions presented by an appeal can be determined without an examination of all the pleadings, evidence and proceedings in the trial court, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the appellate court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and concise statement of the points to be relied on by appellant. If the statement conforms to the truth, it, together with such additions as the trial court may consider necessary to fully present the questions raised by the appeal, shall be

approved by the trial court and shall then be certified to the appellate court as the record on appeal.

(SCO 439 effective November 15, 1980)

Rule 212. Briefs.

(a) Filing and Serving Briefs.

(1) Initial Submission.

(A) *Time for Serving and Filing Briefs.* The appellant shall serve and file the appellant's brief within 30 days after the court gives notice under Rule 210(f) of the due date for appellant's brief. The appellee shall serve and file the appellee's brief within 30 days after service of the appellant's brief. Within 20 days after service of the appellee's brief, appellant shall serve and file either a reply brief or a notice that no reply brief will be filed. In cases involving multiple appellants or appellees who are filing separate briefs, including parties who are deemed to be co-parties under Rule 210(c)(1)(C), the time for filing these briefs shall be extended by 10 days if the parties are preparing excerpts of record in order to allow compliance with Rule 210(c)(1)(B).

(B) *Number of Copies.* On or before the date the party's brief is due, the party shall file with the clerk the original plus one copy of the brief, printed or written on only one side of each page, together with proof of service on all parties.

(C) *Compliance Check.* The court will review the brief for compliance with (b) and (c) of this rule and return the original to the party, with a notice of rejection, conditional acceptance, or acceptance, for correction or for duplication and binding.

(D) *Changes Not Permitted.* After a brief is returned for correction or binding, the party shall make no changes to the brief other than those required by the binding process or required by the court in any notice of rejection or conditional acceptance. The party may also correct spelling and typographical errors and correct and update citations for cases already cited in the originally submitted brief.

(2) Bound Copies of Briefs.

(A) *Time for Service; Number of Copies.* Within ten days after the clerk returns the brief, the party shall serve two bound copies on each party and shall file with the clerk ten bound copies in an appeal before the supreme court or seven bound copies in an appeal before the court of appeals, unless a different number is specified by the clerk.

(B) *Form of Bound Copies.* Bound copies must be printed or written on both sides of the paper and securely bound along the left margin in a manner that does not obscure the text, and that permits the brief to lie reasonably flat when open. Unless otherwise permitted by the clerk, the copies must be bound using comb or spiral binding, but not staples or metal fasteners. The copies must have a suitable cover consisting of heavy paper in the color indicated:

- brief of appellant—ivory or light tan;